

KAUA‘I PLANNING COMMISSION
REGULAR MEETING
July 12, 2016

The regular meeting of the Planning Commission of the County of Kaua‘i was called to order by Chair Mahoney at 9:04 a.m., at the Lihu‘e Civic Center, Mo‘ikeha Building, in meeting room 2A-2B. The following Commissioners were present:

Chair Sean Mahoney
Mr. Wayne Katayama
Mr. Roy Ho
Mr. Kimo Keawe
Ms. Glenda Nogami Streufert

Absent and Excused:
Vice Chair Louis Abrams

The following staff members were present: Planning Department – Michael Dahilig, Kaaina Hull, Leslie Takasaki, Dale Cua; Deputy County Attorney Jodi Higuchi Sayegusa, Office of Boards and Commissions – Administrator Jay Furfaro (*entered at 9:50 a.m.*), Commission Support Clerk Darcie Agaran

Discussion of the meeting, in effect, ensued:

CALL TO ORDER

Chair Mahoney called the meeting to order at 9:04 a.m.

ROLL CALL

Planning Director Michael Dahilig: Commissioner Keawe?

Mr. Keawe: Here.

Mr. Dahilig: Commissioner Streufert?

Ms. Nogami Streufert: Here.

Mr. Dahilig: Commissioner Katayama?

Mr. Katayama: Here.

Mr. Dahilig: Commissioner Ho?

Mr. Ho: Here.

Mr. Dahilig: Vice Chair Abrams? Chair Mahoney?

Chair Mahoney: Here.

Mr. Dahilig: Mr. Chair, you have five (5) members present.

Chair Mahoney: Thank you.

APPROVAL OF AGENDA

Mr. Dahilig: Mr. Chair, we are at Approval of the Agenda. The Department would recommend moving Item F.2. and appropriate action to just before the end of the agenda this morning.

Chair Mahoney: Okay.

Mr. Dahilig: Yeah, to just before Announcements.

Chair Mahoney: Okay. Chair will entertain a motion.

Mr. Keawe: Move to approve the agenda.

Mr. Ho: Second.

Chair Mahoney: Was that a motion to approve the amended agenda? Is that what it was? Yeah? Okay. It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) The motion carries 5:0.

MINUTES of the meeting(s) of the Planning Commission

Meeting of June 14, 2016

Mr. Dahilig: Thank you, Mr. Chair. You do have minutes of the June 14, 2016 meeting for your approval.

Chair Mahoney: Chair will entertain a motion.

Ms. Nogami Streufert: I move to accept the minutes of the June 14, 2016 meeting.

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor? (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

RECEIPT OF ITEMS FOR THE RECORD

Mr. Dahilig: Thank you, Mr. Chair. We are on Item E, which is Receipt of Items for the Record. We have distributed additional items related to SMA Use Permit SMA(U)-2016-5, as well as Class IV Zoning Permit Z-IV-2016-17, and this is a memorandum that has been circulated to the Commission.

Chair Mahoney: Chair will entertain a motion to receive.

Mr. Keawe: Move to receive.

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor say aye. (Unanimous voice vote) Opposed? (None) Motion carried 5:0.

HEARINGS AND PUBLIC COMMENT

Continued Agency Hearing (NONE)

Mr. Dahilig: Thank you, Mr. Chair. We are on Item F. Item F.1., Continued Agency Hearing. There is none.

New Agency Hearing

Class IV Zoning Permit Z-IV-2016-17, Use Permit U-2016-14 and Special Permit SP-2016-6 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the northern side of Koolau Road in Molokai, further identified as 6867 Koolau Road, Tax Map Key 4-9-011:038, and containing a total area of 43,560 acres = Steven & Eddi Henry.

Mr. Dahilig: Item F.2.b. This is Class IV Zoning Permit Z-IV-2016-17, Use Permit U-2016-14, and Special Permit SP-2016-6. This was to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the northern side of Koolau Road in Molokai, further identified as 6867 Koolau Road, Tax Map Key 4-9-011 Parcel 038, and containing a total area of 43,560 acres. The applicants for this are Steven and Eddi Henry.

Mr. Chair, as part of the supplemental items that were received for the record just previous to this item, there is, I guess, a waiver of time that was received by the Commission and part of the request for deferral on behalf of this Department is pertaining to their failure to meet the notification requirements. Therefore, we would request that the Commission defer this item to the October 11th meeting, or the first meeting in October.

Chair Mahoney: Okay. Chair will entertain a motion.

Mr. Keawe: Move to defer this item to the October 11th meeting.

Mr. Katayama: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor say aye. (Unanimous voice vote) Opposed? (None) Motion carries 5:0.

Mr. Dahilig: Mr. Chair, just for the record, there were no public members signed up to testify on this particular agenda item. We would request that the Commission make a call for any Chapter 92 testimony at this time for this agenda item.

Chair Mahoney: Would any member of the public like to testify on this agenda item? Please come up. State your name for the record, please.

Matt Bernabe: Matt Bernabe for the record. I'm familiar with this case and the property and the history of our General Plan. I would really advise all of you to look deep into this, take a visit to the property, and really look at the reality that this is not a true Ag lot. This is a bluff lot that was designed to be expensive to subsidize the more fertile, more mechanizable farm lots in Moloa'a. It's in writing in the 2000 General Plan, and the person who owns and operates this business planned this business around our General Plan. As a public member, I am really worried you will lose this one in court. I'm seriously telling you guys. I think you guys need to seriously look at this particular case because we enticed this person to come to this island and engage in agro-tourism to subsidize the inflated price of this bluff lot. It's in writing by the County. If you have not seen my testimony in the Council on this issue, I recommend you do your homework, watch what I say, read the 2000 Charter, reevaluate this particular one because you may lose big time. I'm sorry to say. I wish it wasn't the case, but I'm looking out for the County in its financial liabilities. This is one we may pay. Please double-look at this case. Thank you.

Chair Mahoney: Thank you for your testimony. Does any other member of the public wish to testify on this agenda item? Seeing none.

Continued Public Hearing (NONE)

Mr. Dahilig: Thank you, Mr. Chair. We are now on Item F.3. This is Continued Public Hearing. There is none.

New Public Hearing (NONE)

Mr. Dahilig: New Public Hearing. There is none.

All remaining public testimony pursuant to HRS 92 (Sunshine Law)

Mr. Dahilig: And there are no other members of the public that have signed up to testify on any other agenda item. The Department would recommend making a final call for any agenda item, with the exception of Item F.2.a., if anybody in the public would like to provide testimony.

Chair Mahoney: Is there any member of the public who would like to testify on any agenda item excluding F.2.?

Caren Diamond: Good morning, Commissioners. Caren Diamond. I'm testifying this morning on the shoreline setback determinations.

Mr. Keawe: Okay. Can you state your name, please?

Ms. Diamond: Sure. Caren Diamond. And I'm testifying this morning on Shoreline Setback Determination SSD-2017-2. I disagree with this determination. Specifically, this is an old house that was built in 1958, and the improvements...the repairs that are being proposed come to 49.9%. If it was 50%, then it would count as a substantial improvement, and they would need to go through a very long process and it would be considered rebuilding. But as it is right now, it's considered just repair because it's 49.9%. The repairs are valued at \$360,000. One of the reasons I have trouble with this is this is an old house built in '58. The waves actually wash underneath the structure that exists right now. So in this determination, the shoreline itself, the certified shoreline, will be waived, and the determination...the applicant stated that the shoreline was 40 feet from the structure that exists, but the waves actually wash underneath the structure, so it would be allowing a structure to be repaired at the cost of \$360,000 with the waves washing under it. The additional problem is that there is no septic tank, so it's a cesspool that was installed in 1958, and this is a vacation rental that sleeps 14 people. So we have the case of the waves washing under this house, a cesspool still servicing this house. Now, this amount of repair is going to make it like new because \$360,000 is very substantial. So I disagree that this should have been waived, and I feel like they should go through proper setback and proper shoreline determination. So I...thank you.

Chair Mahoney: Thank you.

Deputy County Attorney Jodi Higuchi Sayegusa: Okay, just to clarify for the Commission's information, the determinations that are included as part of the agenda is made...is disclosed for public notification. It's a Director determination that is within the Director's authority to make. Pursuant to the SMA rules and regs, the Director can find a proposal is not development, and so that's just for your information at this point.

Mr. Dahilig: Just to further articulate for the Commissioners, this is in Section 8-27.8 Subsection 6. Typically, the Department makes a number of, I guess, administrative calls a day that are based off of ministerial permits. This is one, though, that the Council felt needed more public notification when the Director makes a decision, and so what this is meant to do is to prompt the public to be aware that the Director has made a decision on an item. The recourse for this is that if there is a concern about this that this decision can be appealed pursuant to the rules of practice of this Commission, and that would be the proper forum for this type of matter to be discussed in front of the Commission is to appeal my decision. So, you know, we're perfectly fine with the potential for disagreement, but this is meant, again, to provide more transparency, as part of the agenda, but does not require any action by this Commission at this point.

Chair Mahoney: Thank you.

New Agency Hearing (Continued)

Special Management Area Use Permit SMA(U)-2016-5, Class IV Zoning Permit Z-IV-2016-16, Use Permit U-2016-13 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the mauka side of Weke Road in Hanalei Town, situated at its intersection with Pilikoa Street and further identified as 5111 Weke Road, Tax Map Key 5-5-010:032, and containing a total area of 7,568 sq. ft.
= Faith S. Ben-Dor.

Mr. Dahilig: Okay. Mr. Chair, I'm going to make the call for Item F.2.a., but I will be recusing myself from this matter. This is item F.2.a., Special Management Area Use Permit SMA(U)-2016-5, Class IV Zoning Permit Z-IV-2016-16, and Use Permit U-2016-13. This is to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the mauka side of Weke Road in Hanalei Town, situated at its intersection with Pilikoa Street and further identified as 5111 Weke Road, Tax Map Key 5-5-010 Parcel 032, and containing a total area of 7,568 square feet. I will be, again, recusing myself from this matter and asking the Deputy Director to open the agency hearing on this item.

Chair Mahoney: Okay, thank you.

Deputy Planning Director Kaaina Hull: Chair, we have nobody currently signed up for this agenda item. You may want to make a call to the public to see if there is any testimony.

Chair Mahoney: Is there any member of the public that would like to testify on this agenda item?

Bianca Berger: Hello. Good morning. My name is Bianca Berger, and I'm here to support the approval of Faith Ben-Dor's application. I'm a current resident in Po'ipū, a Visitor Destination Area, surrounded by empty condos, vacation rentals, and tourists. My boyfriend and I would love to live in Ōma'o, a residential area; however, it has become nearly impossible to find an affordable rental. We searched for six (6) months before finally deciding to settle down in Po'ipū. We still keep our eyes open to possible rentals or even properties for sale; however, it is clear that residential area of Ōma'o is saturated and we are forced to move into the Visitor Destination Area. I was shocked to find out that Hanalei is not considered a Visitor Destination Area. I am a server at Duke's Canoe Club and I frequently get asked what the must-see's of Kaua'i are. Either I, or the guests, always mention Hanalei or Hanalei Pier. It is evident within the thousands of mainstream songs, films, books, magazines, and internet media that Hanalei is a visitor destination. When I go online and search "Hanalei, Kaua'i", there are 500,000 initial results on Google, all pertaining to tourism. There are listings for vacation rentals, hotels, and activities to do in Hanalei, how it is one of the Top 10 best surf towns in the world, or how it is, and I quote, "the most picturesque small town on Earth". When I search "Princeville, Kaua'i" on Google, there are 400,000 initial results only pertaining to vacation rentals and reviews on those vacation rentals. There are no listings for activities, the best things to do in Princeville, or any statements pertaining to how great the destination of Princeville is. This is incredibly revealing considering Princeville is actually a VDA, and Hanalei is still considered a residential area. It is clear that Hanalei is on the map as one of the top visitor destinations in the world. People around

the world hear about the beauty of Hanalei and want to come to experience it for themselves. Living in Po'ipū, I can say from experience that Hanalei has far more options for shopping, food, and activities for tourists than Po'ipū does. Hanalei is geared towards tourism and has a lot to offer the vacationers that want to come to Hanalei and contribute to our economy.

Ms. Higuchi Sayegusa: Three (3) minutes, Mr. Chair.

Chair Mahoney: Okay. Could you wrap your testimony up, please?

Ms. Berger: Okay. We should allow them. Furthermore, being a college educated individual who is from Hawai'i and have lived here my whole life, I can attest to how difficult and nearly impossible it is to find a good job that enables me to own my home and live in it by myself. Homestays are the best and most logical way to keep locals a part of the community and allow us to live comfortably while being able to own our own home. My father is an established individual in his field with a separate practice of his own on the side and he still relies on being able to rent out a portion of his home to supplement his income and pay for his mortgage. My boyfriend and I have been looking to buy a home of our own. One of the most important features in a potential home is being able to rent out a portion of it as Kaua'i is very expensive and otherwise, we would not be able to own. Everyone should be able to experience the pleasure of owning their own home and feeling rooted in the only place they've ever called home. The County should support the youth of Kaua'i and their efforts to remain in their home and contribute to the community.

Chair Mahoney: Alright. You've gone past your three (3) minutes. Could you kind of summarize the rest of it?

Ms. Berger: Yes. This is the last part.

Chair Mahoney: Thank you.

Ms. Berger: Uh huh. In my eyes, homestays are an excellent opportunity for the local community and economy of Kaua'i. The locals get to stay in their family homes and remain a part of the community they grew up in while also greatly contributing to the local economy for bringing in tourists who shop at the local shops, buy at the local grocery stores, and eat at the local food outlets. Thank you.

Chair Mahoney: Thank you for your testimony. Any other member of the public wish to testify on this agenda item? Or do you want to wait 'til it comes up?

Joanie Ben-Dor: Hello, hello.

Chair Mahoney: Would you like to wait 'til the item comes up if you're going to testify?

Ms. Ben-Dor: (Inaudible) let me ask you. Felicia...

Chair Mahoney: First, state your name for the record, please. And this is for testimony, and if you're part of the party, do you want to wait 'til it comes up to testify? Or...?

Ms. Ben-Dor: I have a letter from Felicia Cowden.

Chair Mahoney: We have that letter.

Ms. Ben-Dor: You have that?

Chair Mahoney: Yes.

Ms. Ben-Dor: Shall I...can I read that? Or...?

Chair Mahoney: I think the Commission all has the letter already.

Ms. Ben-Dor: They've all read it?

Chair Mahoney: Yes, we all have it. Yes.

Ms. Ben-Dor: Then fine.

Chair Mahoney: Thank you.

Ms. Ben-Dor: Now, I have two (2) letters from my daughters. Can I read them now? Or shall we wait with that?

Chair Mahoney: If you want to read them, go ahead and read them.

Ms. Ben-Dor: Okay. Aloha, everyone. My name is Joanie Ben-Dor.

Chair Mahoney: Are they present? No?

Ms. Ben-Dor: They are not present.

Chair Mahoney: Oh, okay.

Ms. Ben-Dor: Okay. Good. My name is Joanie Ben-Dor.

Chair Mahoney: Okay. Alright. So let's just, you know, try to keep it to...you know.

Ms. Ben-Dor: Okay. My name is Joanie Ben-Dor. My friends call me "Joanie No Baloney" because I'm upfront and I come straight from the heart. Alrighty. Let me read my daughters' letters. I think that says it the best. This one is from Marla Ben-Dor. Dear Planning Commission, this letter is written in recommendation for approval of Faith Ben-Dor's homestay application. Since before I can remember, we have rented out a portion of our home at some point during the year. As a family that had to travel back and forth to the mainland for my

father's work, it was imperative that we rent our house to support our income and provide a space for our pets. My sisters and I were so blessed to grow up on Kaua'i. We were very lucky to have been raised in a place where the land and its natural resources are respected and treasured, where everyone has the Aloha Spirit, looks out for one another as if they are 'ohana. As many know, although Kaua'i and Hawai'i are beautiful, it's very hard to make a living and support one's family. This is one of the reasons I moved to California after college. In my current household, my boyfriend, also a Hawai'i native, as well as a Kamehameha School grad, and I have a daily conversation of how we can make the transition back to our families living in Hawai'i. How can we afford to live on Kaua'i? In the next few years, I would love to move home and start a family of my own. At this point in time, my sisters and I see this permit as a way to come back to the islands and eventually support our extended family's income. I pray that one day, my children will get to experience a similar childhood as I did. Most importantly that my children learn the value of connection with their heritage and the importance of family and culture. To say the least, the past several years have been a whirlwind for my family. We have abided by every rule and new requirement put in place to obtain a homestay permit. This is our final effort and I have all the faith that you will recognize our sincerest plea. With appreciation, Marla Ben-Dor and Ikaika Pidot.

Chair Mahoney: Thank you.

Ms. Ben-Dor: That's from my middle daughter. You're going to hear from my youngest. This is the oldest daughter, Maile. Dear Planning Commission, this letter is written in recommendation for the approval of Faith Ben-Dor's homestay application. Our family has owned the house at 5111 Weke Road since before I was born thirty (30) years ago. We have been renting out the house since we were kids to supplement our income when we travel back and forth to the East Coast for our dad's job. When we were kids, we were one of only a handful of families who lived in Hanalei Town. As the years went on and prices went up, we saw more and more families leaving Hanalei and moving to more affordable areas, like Princeville or Kilauea. Many families rented out a couple of rooms in their home to help pay for their mortgage. These were the families who were able to stay in the neighborhood. When I graduated high school, my parents bought a lot in Hā'ena and decided to build another home. Hanalei had become too crowded and touristy, so they moved to the country. My dad put the Hanalei house on the market for sale, but after seeing how upset we were at the thought of selling the home we grew up in, he took it off the market. My dad allowed me to rent the house, which ended up being a great supplement to my income, a full-time job for me, and a wonderful learning experience. When I got out of college in 2010, there were no jobs for college graduates. I was lucky enough to have a job as a Property Manager renting out our home. Over the years, I cannot tell you how many happy people we met who were thrilled to have the experience of staying in our house instead of a hotel or condo. Most people walked everywhere and I gave them a booklet recommending local businesses, which they happily supported.

Mr. Hull: Three (3) minutes, Mr. Chair.

Chair Mahoney: Can you wrap it up, please?

Ms. Ben-Dor: We had many return visitors who became our very good friends. When we later found out that we were no longer allowed to rent our house because we did not have a TVR permit, we immediately stopped. Our family went to six (6) commission hearings and begged to be given the chance to continue.

Chair Mahoney: Could you summarize it? You've gone over your time.

Ms. Ben-Dor: Sure. Okay.

Chair Mahoney: Try to, please...

Ms. Ben-Dor: Renting the house was never a long-term plan, but it made financial sense while we were in California and Summer was in O'ahu. Let's see. Okay. At our last commission meeting held May 12, 2015, we were told to get our ducks in a row and come back for the permit in six (6) months. Our family has done everything that has been asked of us, including stopping to take reservations; paying fines, both criminal and civil; putting title into my sister's...our names; adding...

Chair Mahoney: Okay.

Ms. Ben-Dor: Good. Hold on.

Chair Mahoney: Could you summarize it? You know...

Ms. Ben-Dor: Okay. Okay. You know what? I'll stop reading Maile's and just briefly who I am. I am a retired teacher. I've been a resident of Kaua'i for thirty (30) years.

Chair Mahoney: Let's...can you just keep...you know, you've gone over your allotted time.

Ms. Ben-Dor: Okay. Okay.

Chair Mahoney: More than enough. And we know who you are, but...

Ms. Ben-Dor: Okay, and I've lived in the Hanalei house for thirty (30) years, sharing it with family, friends, and guests.

Chair Mahoney: Yeah. Thank you very much.

Ms. Ben-Dor: I implore you, if you are a parent, please, please, vote "yes".

Chair Mahoney: Thank you.

Ms. Ben-Dor: I know if you are a parent, you understand.

Chair Mahoney: Thank you very much.

Ms. Ben-Dor: Thank you for your time, and I really appreciate all your efforts. I know this is a major effort for all of you to listen to this and make decisions. Thank you.

Chair Mahoney: Thank you very much.

Mr. Hull: You might want to make a call one more time.

Chair Mahoney: Okay. Any other member of the public who has not testified on this agenda item? Please state your name for the record.

Ms. Diamond: Aloha. My name is Caren Diamond. I live in Wainiha. I just wanted to state for the record that the north shore has been really over inundated with transient units. We've almost lost the character of the neighborhood. Hanalei included Hā'ena, Wainiha. Those were supposed to be residential areas. They are not in the VDA. And at the moment, there are so many transient units that the health, safety, and welfare of the residents is really threatened. So I would ask you not to support this application because I do believe that there are enough transient accommodations in that area, and we really can't handle anymore. Thank you.

Chair Mahoney: Thank you. Okay. One last call. Any other member of the public who has not testified on this agenda item? Seeing none. We'll move on.

Mr. Hull: Seeing no additional testimony, Chair, the Department would recommend closing the agency hearing.

Mr. Keawe: Move to close the public hearing.

Ms. Nogami Streufert: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor say aye. (Unanimous voice vote) Opposed? (None) Motion carried 5:0. Hearing closed.

CONSENT CALENDAR

Status Reports (NONE)

Director's Report(s) for Project(s) Scheduled for Agency Hearing on 7/12/16.

Class IV Zoning Permit Z-IV-2016-18 and Use Permit U-2016-15 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the northern side of Po'ipū Road in Po'ipū, approx. 250 ft. north of the Kipuka Street/Po'ipū Road intersection and further identified as 2375 Kipuka Street, Tax Map Key 2-8-023:040, and containing a total area of 10,570 sq. ft. = Rebecca Smith-Magdaleno.

Mr. Hull: The next agenda item is Item G, Consent Calendar, which you have one (1) single Director's report. No action is necessary on the Consent Calendar.

HEARINGS AND PUBLIC COMMENT (Continued)

New Agency Hearing (Continued)

Class IV Zoning Permit Z-IV-2016-17, Use Permit U-2016-14, and Special Permit SP-2016-6 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the northern side of Koolau Road in Moloa'a, further identified as 6867 Koolau Road, Tax Map Key 4-9-011:038, and containing a total area of 43,560 acres = Steven & Eddi Henry.

Mr. Hull: The next agenda item is Item M, New Business for Action. Concerning the agenda item that was moved...excuse me. Prior to moving to Agenda Item M, there's a correction that the Department would like to return to considering the Class IV Zoning Permit Z-IV-2016-17, Use Permit U-2016-14, and Special Permit SP-2016-6 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located on the northern side of Koolau Road, applicants Steven and Eddi Henry. The Department had earlier in this meeting recommended that that be moved to October 11th, and the correction that that should be moved actually because of publication requirements, it should be moved to the August 23rd meeting.

Ms. Nogami Streufert: Instead of October 11th?

Mr. Hull: Yes. So the Department would retract its original recommendation and...

Ms. Nogami Streufert: What was the date again? I'm sorry.

Mr. Hull: August 23rd. So Jodi, does an official withdrawal of the motion need to be made by the initiator?

Ms. Higuchi Sayegusa: Yes. And the second, and then a re-...

Mr. Keawe: I withdraw my initial motion.

Chair Mahoney: And the second?

Mr. Ho: Second.

Ms. Higuchi Sayegusa: I'm sorry. That was Wayne...I'm sorry...Commissioner Katayama.

Mr. Katayama: Yes. I withdraw my second.

Chair Mahoney: Okay. Alright. So now we are going to entertain a motion to amend it to August 23rd, I believe, so we need a motion on the floor.

Mr. Keawe: I move to amend moving the...this item, Class IV Zoning Permit Z-IV-2016-17, Use Permit U-2016-14, and Special Permit SP-2016-6, to August 23rd.

Mr. Katayama: Second.

Chair Mahoney: It's been moved and seconded. Any discussion? Hearing none. All in favor say aye. (Unanimous voice vote) Opposed? (None) The motion carried 5:0.

NEW BUSINESS

Special Management Area Use Permit SMA(U)-2016-5, Class IV Zoning Permit Z-IV-2016-16, Use Permit U-2016-13 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the mauka side of Weke Road in Hanalei Town, situated at its intersection with Pilikoa Street and further identified as 5111 Weke Road, Tax Map Key 5-5-010:032, and containing a total area of 7,568 sq. ft. = Faith S. Ben-Dor.

Mr. Hull: Commission Chair, we are now on Agenda Item M, New Business for Action. The first agenda item is Special Management Area Use Permit SMA(U)-2016-5, Class IV Zoning Permit Z-IV-2016-16, Use Permit U-2016-13 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located along the mauka side of Weke Road in Hanalei Town, situated at its intersection with Pilikoa Street and further identified as 5111 Weke Road, Tax Map Key 5-5-010:032, and containing a total are of 7,568 square feet. The applicant is Faith Ben-Dor, and Dale is our planner on this application.

Staff Planner Dale Cua: Good morning, Mr. Chair and members of the Commission. At this time, I will summarize the Director's Report for you.

Mr. Cua read the Summary, Project Data, Project Description and Use, and Additional Findings sections of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: Agency comments are attached as Exhibit B. Also, the Findings of Fact, Conclusions of Law, and Decision and Order is attached as Exhibit A to the Director's Report. That concludes the Staff's findings at this time.

Chair Mahoney: Thank you. Any questions for the Planner? Is there a representative for the applicant?

Mr. Hull: The applicant is here and I believe they have a PowerPoint presentation to make at this time.

Chair Mahoney: Okay. Could somebody approach the...and state your name for the record, please? We are going to take a short recess until this is set up, okay? Okay.

The Commission recessed this portion of the meeting at 9:37 a.m.
The Commission reconvened this portion of the meeting at 9:42 a.m.

Chair Mahoney: Call the meeting back to order. We'll have the presentation now. State your name for the record, please.

Faith Ben-Dor: Aloha. My name is Faith Ben-Dor. You can also call me "Summer". Aloha, Commission members. For those of you I have not yet met, my name is Faith. I also go by my middle name, Summer. Many of you were present for my family's previous hearings. This process all started back in 2013 and here we are in the middle of 2016. I would not be here applying for the second time, going through this process for over three (3) years, spending so much time, energy, stress, and finances if this did not mean the world to my sisters and I. I do have the presentation and I also have the handout here that will echo that. I just feel like seeing images is a lot easier in my opinion.

Since you've just heard from the Department, I would like to first address the Director's Report as I feel it omits a lot of crucial information that pertains to my case. First off, the Director's Report and Findings of Fact stated three (3) times throughout the entire document that there were multiple complaints, which is a false statement and Kaaina can echo that. There was only one (1) anonymous complaint; not by a Hanalei resident, not by someone that cares about the welfare and community of Hanalei, not by one of our neighbors, but a complaint by someone that has a personal vendetta against my family.

Secondly, the Director's Report and Findings of Fact mentions that one (1) complaint three (3) times, but fails to include the twenty-seven (27) community signatures attached as Exhibit M of my application, or also Page 2 and 3 of your handout, and the letters of support attached as Exhibit L that were submitted by my neighbors. In front of you in your handout, on Pages 4 through 7, are the signatures of support from not just members of the Hanalei community, but from members of the entire Kaua'i community that wanted to show their support for my application but did not have the time to come and speak today. In all, I have over 100 signatures from the Kaua'i community in support of my application.

Thirdly, on Page 2 of their Findings of Fact, and I quote, "The applicant has used the dwelling on the Subject Property as an illegal transient vacation rental prior to the application." The entire report fails to include that it was a legal, licensed vacation rental for over twenty (20) years since '87 and that we have always paid our taxes. We were still paying vacation rental tax up until 2013 when we were notified of the violation. So the wording, in my personal opinion, is a bit misleading as it was not prior to this application, it was prior to the first application three (3) years ago.

The Director's Report failed to include anything about our previous Contested Case Hearings. A span of six (6) months wasn't even mentioned where I was told multiple times by the County Attorney, at that time, and the Commission members that I could come back in six (6) months once I had my requirements in order.

My fifth point is that the Director's Report omitted that we had an inspection and were required to alter the home before the acceptance of our application. Other applicants had violations, but fixing them would've been made conditions upon approval of their applications, but this was not the same in our case.

On Page 2 of the Findings of Fact, it's...the statement is that the application has demonstrated that the homestay will be detrimental to health, safety, peace, morals, comfort, etc. And then on Page 5 of the Findings of Fact, the wording is the opposite that the application has not demonstrated that the homestay is detrimental. So I believe that Page 5 has the correct wording and that Page 2 should be amended as my application has not demonstrated that my homestay will be detrimental to health, safety, peace, morals, or persons in the area/environment. The signatures in letters of support from neighbors are the greatest proof that they are the people that are involved that those are the persons that they're talking about that are residing in the area and working in the area, and these people have shown support for my application.

I'd also like to point out that this application is to invite six (6) visitors into my home. The TVRs immediately surrounding my home, as seen on Exhibit K of my application, advertise that they sleep upwards of fourteen (14) people, eleven (11), etc. and have barely any outside parking. My family is made up of five (5) people plus guests and family that have stayed at our house over my entire life; that's more people that would be in my home if I were to be granted this homestay permit, and all the parking will be onsite.

My last point about the Director's Report is that Hā'ena is mentioned multiple times throughout the application. Hā'ena is a real residential neighborhood. Hā'ena has no commercial sector, whereas Hanalei caters completely to tourists. This application is about Hanalei, not about Hā'ena. And Princeville, the VDA, has a grocery store. It has two (2) banks. It has a police station, a fire station, a hardware store, and low-income housing. These are places for local people, and yet Hanalei is the area that is zoned residential. So if Hanalei is zoned residential, in my opinion, it would make sense that the low-income housing would be provided there, but the answer to that is no, because Hanalei is too expensive.

In closing, the Department's Director's Report left out important information that is crucial to you, the Commission, in making your decision on my application.

So, to continue, I'd like to start off by giving a brief history of my home, our current situation, and the hope I have for the future. My parents purchased our home in 1986 out of desperation as my sister Maile was to be born in less than two (2) months and there were no rentals available that would allow our animals. My dad's business was in New York City, so from before I can remember, we commuted back and forth between the mainland and Kaua'i. Growing up we had two (2) Siamese cats and because of quarantine, it was difficult and stressful on them to bring them back and forth to the mainland. My parents obtained a TAT License to rent out our home in 1987, and while we were away, we would separate our home; our cats on the one side and vacationers on the other. A family would come to feed and take care of them every day, but these cats were more like family, which is why you can understand they got half of the house to themselves. For eighteen (18) years of my life, I grew up in this home. I went to preschool down the road at Aloha School, I went to grade school in Hanalei, and I commuted to Kapa'a for high school. The high school bus made very few stops in Hanalei. The first was at Ching Young Village to pick up students that lived in Hā'ena and Wainiha that were dropped off by the small bus, and the second stop to pick me up a block from my house. My sisters and I were always the only students at our bus stop. Regardless of the zoning, for all of my life Hanalei has never been residential. We've never had other children as neighbors next door. One of the only long-term

next door neighbors we had growing up just sold his home this year and moved to California as Hanalei became too expensive to live without the possibility of short-term renting. When my parents moved to Hā'ena, they put our house on the market. My sisters and I begged and pleaded with my dad to keep our house so that we could, one day, raise our own families in the same rooms that we, ourselves, grew up in; steps away from Hanalei Bay. We decided to continue renting as we had done since 1987.

We were informed of our violation on August 29, 2013. An agreement with the Planning Department was reached on May 30, 2014 whereby we paid the fine, all advertising ceased, we removed our website, and no further reservations were accepted, which as you folks know, was not consistent in other applications as others continued operating while their Contested Case Hearings dragged on. In return, the County accepted our application for a homestay. We had a total of five (5) public hearings which lasted six (6) months from October 2014 to May of 2015; one of which lasted from 8:00 a.m. to 7:00 p.m. where there was a break for lunch and for dinner, so for that, we do thank you, Commissioners, so much as we know you are all volunteering your time to this community. I have included the dialog from my last hearing on May 12, 2015 as Exhibit O of my application, as I think it is very important and that it brings us to where we are today. During our final hearing, we were told by the Commissioners that I had the opportunity to return in six (6) months, which would have been November 25, 2015 with my, and I quote, "ducks in a row". These are just a few of the quotes that I took from the hearing for you to look over and you can read them over yourself as they are on Page 8, also, of the handout. So you'll notice a few things that "ducks in a row" and "returning in six (6) months" was the common factor among many quotes, and these are not just them. Mrs. Mendonca had said that in support of my motion, I can understand the fact that these people are possibly, and may have been given the wrong information or got confused, but I do support the interpretation of the homestay. Given the fact that the door is still open that there is a 6-month period where they can get all their things in order, I think it is just fair. So it was our lawyers and our mistake to assume that the Commission would impose a condition that I would be added to the title upon approval of this permit. I am back today, a year and two months since my last hearing, as the resident and owner of my home, as you Mr. Keawe, said to demonstrate good faith and to show you that I have cooperated with all that the County and Department have asked of me in coming before you today. I believe that the Department will vouch for me in that I have been very cooperative throughout the entire application process, and all I can now hope is that you see how much this means to me. I tried my best to get my application in sooner, but I was informed by the Planning Department that I may not apply until...for a homestay permit until 2016, as the status of the homestead class would not come into effect until the start of the new year, even though I was accepted in August of 2015. So since we have had a lot of experience with the Department's protocols and knew that a home inspection would be necessary, we contacted the Department ourselves and had one scheduled. So in the beginning of December of 2015, three (3) members of the Planning Department came to our home for an inspection. Two (2) months later, in February of 2016, we were informed of the results from the home inspection. We were told by the Planning Department that we were not able to reapply for a homestay permit until all of these violations were cleared up. As I was told, if we did not complete these tasks quickly, we would not be in the pipeline to apply for a homestay permit outside of the VDA, which is why we went to work immediately.

So now I'd like to go over the violations. The first violation was the upstairs deck, which required us to remove the staircase access, remove the landing, to seal off the access, and to reduce the walls of the parapet that existed since 1992. So this is what it looks like today. The second condition was to remove the preexisting kitchen...first level kitchen that according to the Tax Department was legal since 1995. Despite the fact that it was not a kitchen by definition, as all cooking appliances had been removed years ago, we were required to remove all of the cabinets, the countertops, remove the sink, and to hide the water access behind the wall. The Department has allowed other applicants to keep their sink and counter since that does not indicate it as a kitchen, but in our case, we were required to remove it in order to apply for this permit. So this is what it looks like today. The third condition was that we must remove the doors and hinges that were in the home since 1986 and to widen and enlarge the doorways that have existed for thirty (30) years. There are now no lockouts or separation in my home. So that is what it looks like today. Here's another doorway.

So as part of my application, I had to send a letter notifying my neighbors within 300 feet of my upcoming public hearing. I think my affidavit is proof enough that my neighborhood is not residential, and if you see in front of you on Page 13, I've highlighted it for you. Of the twenty-two (22) recipients, only seven (7) had Hanalei mailing addresses and of those seven (7) from living here all of my life, I know that only four (4) are long-term residents and those four (4) have been highlighted for you. And yet my area is still being zoned residential and that the Department is recommending denial partially on that basis alone. I believe that the list of signatures...that's the other second page. I believe the list of signatures and the letters from my neighbors is very important to my application and that these are the people that matter; the people that live in this community. The people that can tell you that my application is a compatible use and is not, in any way, detrimental to health, safety, or the environment. These are three (3) quotes that I pulled from our Hanalei neighbor Jill Landis' letter of support attached as Exhibit L, or Page 15 and 16 of your handout in front of you. First off, if the argument against granting the Ben-Dors a B&B/Homestay Permit is that doing so will impact the "residential" neighborhood where the Ben-Dor property is located, that argument doesn't hold water. Aside from two (2) or three (3) homes within 300 feet of the Ben-Dor house, all are full-on, permitted TVRs with no full-time owner or resident living on or near the properties. Secondly, with today's high property taxes and cost of living, permitting local residents to legally rent out a portion of their home to short-term guests is one way to keep a neighborhood more residential. It allows long-term residents to keep their homes and not have to sell out to residential investors who are here only occasionally and otherwise let the properties sit empty. And lastly, given the cost of property in Hanalei, the idea of denying B&B and Homestay Permits in the hopes that long-term rentals will become available is a pipe dream.

Hanalei has and always will be a tourist...one of the main tourist destinations on Kaua'i. Hanalei Bay was voted No. 1 on Dr. Beach Stephen Leatherman's 2009 Top Beaches in America. Hanalei has been featured in countless movies, including South Pacific, The Descendents, and Dragonfly, and songs such as Hanalei by the Red Hot Chili Peppers. I don't know any other major motion picture that mentions Hā'ena, Kīlauea, Wailua Homesteads, or Anahola as these residential neighborhoods are not tourist destinations in the way that Hanalei is.

My sister is in real estate so I had her pull this MLS report for you from 2015 and '16. As you can see on the numbers and it's also in front of you on your handout, Hanalei is double, triple the amount of sale properties that every other of these areas; Waimea, Līhu'e, Kōloa. And from the U.S. Census Bureau, the 2014 per capita income for Kaua'i is \$27,000. I mean, I don't know what residential...or what local resident will be able to afford this house once...if we don't get this permit and sell it.

Hanalei is zoned residential, but because of its proximity to the beach, the housing properties are some of the greatest on the island. This forces residents to sell because they cannot afford their mortgages and tax rates, and the new buyers will more than likely be offshore investors, which increases the housing properties, and thus increases the amount of empty homes. Homes will be sold at an even higher value than before. Thus, the County will increase the taxes to reflect the higher value of properties in the area. The outcome of all of this is that you are hurting residents. My parents bought our home thirty (30) years ago and if we have to sell, there's no way we could buy it again today. Just as a note, that neighbor that just sold, because his house is smaller than ours, our taxes are going to go up by 25%.

These are...I know maybe you don't all get to Hanalei very often, but these are photos I just took the other day of all this illegal parking. The one on the right corner is my neighborhood; that's a bunch of illegally parked vehicles.

Everyone I've spoken to find...in getting these signatures, over the 100 signatures, that's a 15-minute conversation each...finds it just as backwards as I do that Hanalei is zoned residential. If you took a consensus, you would find that much more long-term residents live in Princeville because the cost is cheaper and it's less crowded and it's quieter. Tourists want to be close to the beach and this is why they are willing to pay more. The County has allowed for Hanalei to have a huge commercial sector to cater to tourists much larger than the commercial sector that's in the Princeville VDA, and now the County wants to turn Black Pot into another money making commercial area in Hanalei.

Hanalei, the most expensive tourist driven area on Kaua'i, is zoned residential. I ask you, how does that make sense? If you want to keep residents in Hanalei, then homestays are the best way. Hanalei cannot be grouped with other areas on Kaua'i that are zoned residential. They are just simply not the same, and because of that, I feel that Hanalei should be treated accordingly.

If I do receive a permit for a homestay, I plan to remain in the portion of the home that I live in now; in the upstairs 1-bedroom containing the kitchen above the garage...sorry, that's hard to see...above the garage and laundry room as seen on Page 2 of Exhibit E on my application, the as-built plans, or Page 20 of the handout in front of you. I hope to rent out the other portion, a 1-bedroom unit upstairs and a 2-bedroom unit downstairs, to either one (1) family or, at the very most, two (2) families. I plan to offer a complimentary breakfast to guests, and recommendations for lunch and dinner options will be given to guests which will help the Hanalei community and local businesses. Guests will not have access to the kitchen, but will be provided with an outdoor barbeque and a mini refrigerator for storage.

The greatest thing about homestays is that they are owner-occupied. I will be there day in and day out to manage guests, quell the noise, and to ensure that the welfare of the neighborhood is maintained. I am currently not married with no dependents living in a 4-bedroom home. Unfortunately, with the high prices of taxes in Hanalei, long-term renting does not make sense for me financially.

Using the General Plan as a point of departure, the County of Kaua'i, Department of Planning retained the firm of Helber Hastert & Fee to address the recommendation of the General Plan with respect to transient vacation rentals and bed and breakfast establishments. This report also understood that long-term renting in Hanalei is unfortunately not realistic. This is a quote from Page 37 of the consultant's report, "Zoning regulations for TVRs cannot solve affordable housing problems alone. It has been estimated that only 20% of TVRs would be realistic long-term rental housing properties anyway." That's a quote from John Knox in 2015. A large number of short-term rentals are in high-priced neighborhoods and would not be affordable to most families on Kaua'i. That was 2015 [sic] and now, eleven (11) years later, the prices of homes in Hanalei have skyrocketed even higher. Thus, long-term housing is even more unheard of in Hanalei.

I had just spoken with a friend who owns a business in Hanalei and has been long-term renting in Hanalei. Her family is now being asked to move as the owner is forced to sell his home, as he is not making a profit from long-term renting after his mortgage and his tax rates are factored in. It's looking like they will both...her entire family will be forced to move to the east side of the island and commute to the north shore daily for work. This story is becoming all too common.

My hope is to be able to share my home and supplement my income until the day comes in the not so distant future that my sisters and I will occupy the home with families of our own. Right now, I am only one (1) person, but in the next few years, I may only need to rent out one (1) bedroom or none at all. I know that a lot of people have a lot to say about my family and who they think that we are. The fact is that this is not about making money. That is so very far from the truth. If it was, we would've sold our home three (3) years ago, invested the money, and not have spent all this time in our lives doing everything we possibly can to obtain this permit. I have met the requirements of this permit as I am the resident of my home, I am the owner of my home, and my homestead class exemption was accepted by the Tax Department in August of 2015. With over 100 signatures, I have shown to you that my neighborhood is not residential, and that countless members of the Kaua'i community from all over the island support my application. I ask all of you today, what is your ideal outcome if you were to deny this permit? Denying this permit will force us to sell our home like many others have already done and the person that buys our home...I can almost guarantee you it will not be a resident of Kaua'i. It will become another empty home in Hanalei, not a long-term rental opportunity for locals. I believe the County knows the truth themselves. Quoting from Page 36 of the consultant's document, "Communities with lots and homes in the highest priced categories will serve a relatively limited segment of the local market and have a proportionately large share of off-island buyers." And another quote from the bottom of Page 35, "Prohibiting short-term vacation rentals will not necessarily solve the affordable housing problem by itself. Clearly, Kaua'i remains an extremely attractive investment area for offshore buyers. The volume of sales to offshore buyers and the increase in purchase costs have priced many Kaua'i families out of the housing market."

Hanalei Town is a booming commercial sector and that it appears to grow daily with new shops and food trucks popping up all of the time. The parking lots are jammed and tourists are all over the town. This situation was not...was caused by the Planning Department allowing all of this commercial development, not by the residents who are opening their homes to visitors to supplement their incomes and afford these homes. I understand the intent behind your homestay rules, but you have to see the consequences of these actions. Local residents are being priced out of this so-called residential, tourist-driven, commercial neighborhood. Homestays keep money in the community. They help small businesses and allow owners to hire members of the community as gardeners, plumbers, maids, and more; instead of building more corporate hotels. Homestays give visitors a whole new experience and outlook on our islands and culture that they could never get from staying in a hotel. Homestays are the best way to keep local Kaua'i residents a part of the Hanalei community.

Thank you, Commissioners, for volunteering your time and attention today in allowing me to plead my case and share where I am coming from. The people that matter most, the Hanalei residents and the community members of this island, are on the sheets of paper in your handout supporting my application and supporting homestays. I hope that I have shown to you how much this permit means to my sisters and I, and that you consider all factors and persons involved in making your decision today. Thank you.

Chair Mahoney: Thank you for your presentation. Commissioners, are there any questions for the applicant?

Mr. Hull: Before the questions begin, I'll also point out that as the applicant pointed out that in the Director's Report and in the Findings of Fact the Department presented to the Commission, it cited a number of complaints or multiple complaints and, in fact, the Department stands corrected and would verbally amend both its report and proposed Findings of Fact to state it was a single complaint.

Chair Mahoney: Okay. Commissioners, questions for the applicant? Anyone?

Mr. Katayama: Chair?

Chair Mahoney: Yes.

Mr. Katayama: I guess I could start.

Chair Mahoney: Okay. Commissioner Katayama.

Mr. Katayama: Thank you. Thank you for your presentation. It was very informative for me. Can you help me sort of connect the dots? Is the economic driver the principle reason that you're doing this? And have you...the conundrum before the Commission is that it is outside the VDA and what that means is that certain infrastructure support and the certain things that the County looks at in supporting a higher intensity use is part and parcel of their long-term. I know that historically it's been as described; however, as things change, you know, we also look at it and people need to sort of adapt to the uses moving forward. Hanalei chooses to be residential.

Now, as non-residential uses are applied for and creeps in, you know, we...that's the conundrum this Commission faces. You know, do we keep it at historic levels? Or do we manage it to some other level? So, for me, I think what would be helpful is that the Department's position is based on a community intensified use if you read their analysis of the current situation. How much of the desire to be a bed and breakfast is driven by the economics? I know that you have stated several times in your presentation about supporting real estate values, but that is sort of a non-cash issue. Now, I assume that the rental proceeds, which are a cash item...is that the level that you need to sort of sustain and maintain that home site? Or would a...sort of a ratcheting down of the intensity be at a more acceptable level?

Ms. Faith Ben-Dor: The main goal of this...and I mentioned...is the economics of it, but the main goal is so that one day my sisters or I...which I'm the youngest. My sister's turning 30 this month. We are all planning...well, she's planning on moving home in a few months. The main goal of this is for us to live in the home eventually, and this is the only way that we could hold on to it. We've looked at long-term renting [sic] and unfortunately, it's not an option. So...

Mr. Katayama: I guess my basic question is, what's going to change to decrease intensity of use? What do you foresee? You know, if your plan is to maintain a residence there and get you moved out of the homestay, what is going to change to make you achieve that goal?

Ms. Faith Ben-Dor: Sorry, what did you say about moving out of the homestay?

Mr. Katayama: If you're going to establish a full-time resident...or more intensive residential use, right now you have, I guess, four (4) bedrooms, three (3) of which will be used as homestay...

Ms. Faith Ben-Dor: Yes.

Mr. Katayama: And in your testimony, I believe you stated that eventually, you want your sister or your family to move in and intensify the residential side of that building.

Ms. Faith Ben-Dor: Yes.

Mr. Katayama: What's going to change the economics to make that happen?

Ms. Faith Ben-Dor: Are you saying...sorry, I'm not understanding exactly the question.

Mr. Katayama: Right now, your...in your presentation, I think you said that you need the homestay, which is the three (3) units, to support the economics of you keeping your household.

Ms. Faith Ben-Dor: Yes. Well, I mean, right now...like, say, my sisters were living in California, they're going to move home, they're paying for rental places there. So, I mean, economically, like we'll be living there and we'll be able to rent out maybe one (1) room or two (2) rooms or things like that, so that'll be able to support us. But my plan right now is that it'll supplement it, but hopefully I only will need one (1) room or maybe no rooms at all in a few

years down the road. So, I mean, the main point of this is it's not like this is like a money-making machine; that's not the main drive here.

Mr. Katayama: But in your testimony, didn't you say that if the homestay was not granted, you will be forced to sell the home?

Ms. Faith Ben-Dor: Yes. Maybe ten (10) years down the line, you know, I'll have children and I won't need to rent out the house, but right now it's a four (4) bedroom house, like, I could rent out the two (2) bottom units for homestay use. So I can't predict when I will need to do that, but it is right now that we've honestly spent a lot of money on this, and economically, it just...it really doesn't make sense for long-term renting [sic] or for me to just sit on the house like I have been doing now. So, I mean, I guess it's not...

Mr. Katayama: Can you describe what you mean by not economic?

Ms. Faith Ben-Dor: Not economic in what way? Like how...if I'm long-term renting [sic]?

Mr. Katayama: Well, yeah. Whatever that means. I mean, you've used that term several times in your presentation, and I just want to connect the dots. I'm having a challenge with that; understanding what is uneconomic about long-term rental versus a homestay.

Ms. Faith Ben-Dor: I mean, the taxes themselves are outrageous in Hanalei. Like houses on the beach, they were, like, something upwards of \$100,000/\$200,000. They're absolutely...if you compare the tax rates to other areas, it just doesn't...it doesn't equal out in order to stay in the home or long-term rental [sic] it. I mean, if you were just to...say a 2-bedroom home...or two (2) bedrooms, if we were able to separate it, which we're not able to, we don't have an ADU, so that would be renting out either the bedrooms or if I had moved out and I rented out a 4-bedroom house. I mean, a 4-bedroom house?! Which an affordable rate for long-term, I mean, a 2-bedroom...when I used to rent other places, a 2-bedroom unit, that's upwards of \$2,500, and this is somewhere that's right on the beach. So, I mean, with the taxes, and you're getting that monthly, it just doesn't equal out to what the house is worth and how much we've been paying and how much this whole thing has cost. So it just doesn't pay, and that's what you'll find when you talk to a lot of people in Hanalei that...like I mentioned, like the woman that I know who...the owner is selling his house because he has been renting it and in their family, they have two (2) adults and three (3) children, and they've been long-term renting this house, which is much smaller than ours, and the owner can't afford it because he's not making any profit off of it.

Mr. Katayama: (Inaudible) go ahead. Thank you. Thank you.

Mr. Keawe: So, anyway, your presentation was well done.

Ms. Faith Ben-Dor: Thank you.

Mr. Keawe: So my question is, now that you're part owner of this house, what are the taxes on a yearly basis?

Ms. Faith Ben-Dor: I don't have the exact figures for you.

Mr. Keawe: Give me a ballpark.

Ms. Faith Ben-Dor: Would you say (inaudible)?

Ed Ben-Dor: (Inaudible)

Mr. Keawe: Property tax.

Mr. Ben-Dor: (Inaudible)

Chair Mahoney: Hold on, hold on.

Ms. Faith Ben-Dor: He is a part owner as well.

Chair Mahoney: You can't...yeah, you have to come forward. You can't testify from the audience, so come forward, please, and state your name for the record. Thank you.

Mr. Ben-Dor: My name is Ed Ben-Dor.

Chair Mahoney: Okay. Could you speak up a little louder, please, Mr. Ben-Dor?

Mr. Ben-Dor: Yes. My name is Ed Ben-Dor.

Chair Mahoney: Thank you.

Mr. Ben-Dor: And the taxes currently, now that...the house is assessed for \$2 million by the County of Kaua'i, and I believe, based upon the homestead taxes that were just given to Summer, I believe it's about 1/3 of a percent, so it's down to about \$6,000. Two (2) years ago it was about \$20,000. What...is that what you wanted to know, sir?

Mr. Keawe: Yes because she had mentioned there were properties that pay in excess of \$100,000.

Ms. Faith Ben-Dor: There's a house on the...

Mr. Ben-Dor: Well, across the street...

Ms. Faith Ben-Dor: On the bay.

Mr. Keawe: So I wanted to find out what this particular house was assessed at and what the taxes were currently. I mean, the tax was just recently due.

Mr. Ben-Dor: (Inaudible) Yes, sir.

Ms. Faith Ben-Dor: But the assessment is also going up.

Mr. Ben-Dor: Well, that's another story. Well, we have two (2) issues here and that's what Summer was trying to indicate. What's happening is that the taxes change. We don't know where they're going to be; that's number one. Secondly, the house next to us, right next to us, was just sold for \$2.5 million, so we're assuming our taxes are going to go up as much as even 25% annually in one (1) year. That's basically where it's at.

But I think, sir, Mr. Katayama asked a very interesting question and I know where he was coming from, okay? He's a business man. You're all business people. There is equity in this home, and this is something we have to look at. It's not just...you can't...you know, you put equity...if you're going to start a business, you have to look at the amount of money that you put into that business. There's equity there. This house has equity. And if we sell the home and invest that money...and you're all business people...take that 10% and invest it at 10%, which I've been able to do quite well for the last 25 years, we will get \$200,000 a year in income. She'll never get that in what she's talking about. All Summer is talking about here is the ability to stay in the house, supplement her income somewhat because yes, ladies and gentlemen, it may be...this isn't a forum, or maybe it is, to the island of Kaua'i, but she's trying to build a farm business, and this farm business is owned by her, her sisters. Mom and dad are helping out, working there physically every day. It hasn't produced positive results. Chair Mahoney is aware. He gave us the permit to...one of the permits for this business. In future years, Lord willing, this business will allow her to support herself. But truly, yes, this is an avenue whereby she's able to increase her personal income, which the farm is not giving. The farm is literally a couple miles away, so she's there all the time. But, most importantly, it'll give her the opportunity and her sisters, who own the house together, give them the opportunity to get some income. And yes, I guess what I'm trying to understand, ladies and gentlemen, is what is wrong? What is wrong with getting some income? This is...you know, it's as though...we all need money to live and we already have, according to the County, \$2 million invested in this home. If you find it better that we sell it...

Chair Mahoney: Could we kind of just direct it back to...

Mr. Ben-Dor: Yes, sir.

Chair Mahoney: You know, instead of going off on a tangent.

Mr. Ben-Dor: Pardon me for going off on a tangent.

Chair Mahoney: No, no, that's fine. I understand, but...so we can just keep it to the relevant facts that were testified on by the applicant, and continue the conversation that way.

Mr. Keawe: So, again, to the question, your response was about \$6,000?

Mr. Ben-Dor: Yes.

Mr. Keawe: Thank you.

Chair Mahoney: Okay. Any other questions? Commissioner Streufert.

Ms. Nogami Streufert: One of the things that you said was that local residents are being priced out. How does a TVR assist local residents not to be priced out? Other than yourself, but in terms of other residents, how does that help them?

Ms. Faith Ben-Dor: I don't think I was mentioning TVRs. I was mentioning homestays. That I feel that homestays...

Ms. Nogami Streufert: How does a homestay help?

Ms. Faith Ben-Dor: So that a long-term resident can live on...like, live in these neighborhoods and rent out and supplement their income.

Ms. Nogami Streufert: So wouldn't a long-term rental be more advantageous for keeping residents in Hanalei?

Ms. Faith Ben-Dor: Homestays offer that long-term...you know, them able to long-term rental and stay in Hanalei and stay in these communities. Most of the people that own the homes in Hanalei that are local residents were people like us that bought it in the 80s or in the 70s and have owned it this whole time. Like, you don't have local residents who are buying it at this...today's value, and moving in and living there. I don't know anyone. The person that just bought it has four (4) or five (5), six (6) different houses all over the world. So, I mean, the people that are buying it are offshore investors who stay there partially in the year. So what I was saying is that homestays are, in my opinion, a way to keep residents in Hanalei. Like, unfortunately, there are a lot of TVRs in Hanalei, and we can't change that fact that it...that's what it is unless there's a way to, you know, backtrack or take that away, but it is what it is and now we have to solve that problem and this is our way of...if I'm able to live in the house or my sisters are able to live in the house, then we can be a long-term resident of Kaua'i that is living there in this community. And if not, it's going to get sold to another person that's going to have an empty house in Hanalei. So the people that, you know, maybe have spoken against, maybe they don't even own their houses. They're renting houses. Someone that owns a house understands that it's not easy to afford a house without the ability of renting. Like, that's with anyone that I talked to that's looking to buy a home. Like, they're forced to buy, possibly, in the VDA so that they can do a short-term rental in order to afford their house. So it was not TVRs, it was homestays that I meant by that.

Mr. Ho: Mr. Chair?

Chair Mahoney: Commissioner Ho has the floor.

Mr. Ho: How did you get to renting all three (3) bedrooms? Or three (3) bedrooms out of the unit that you have?

Ms. Faith Ben-Dor: I'm just one (1) person that lives there. I only have one (1) room, and that's why I'd like to apply to have the other three (3) bedrooms because it is just me now. I don't

know when I'll be married or, you know, have children to take up those other rooms. I don't intend to always have those three (3) rented out, but that's what the house is, and instead of those sitting empty, if I were to rent out, you know, two (2), but it's a 4-bedroom house and I live in one (1), and that's why I got to the three (3).

Chair Mahoney: Any other questions from any Commissioners for the applicant? As far as applying for the application, maybe I could ask this to the Deputy Director, were the dates and everything...the timelines?

Mr. Hull: Yeah, so the...well, as the Commission knows, the County Council recently, a month or two ago, adopted...or two (2) or three (3) months ago...adopted an ordinance that prohibits homestay operations outside of the Visitor Destination Area, and that ordinance was signed into law by the Mayor. This application was received prior to the adoption of that ordinance, so this application was officially received and accepted on May 18, 2016. And under...because they were able to get it in prior to the adoption of the ordinance, they are essentially reviewed under the old zoning code which allowed for homestay operations to operate outside the VDA with a Use Permit, which is why they are here before you today to have their Use Permit application be reviewed. There are roughly two (2), maybe three (3) more applications that were able to get in before that ordinance was adopted, so you'll be ultimately reviewing two (2) or three (3) more. But this is kind of the tail end of applications that were received and accepted prior to the adoption of that ordinance.

Chair Mahoney: Okay. Thank you. Any further questions, Commissioners, for the applicant? Hearing none. If we could continue with the Planner.

Mr. Cua read the Preliminary Recommendation section of the Director's Report for the record (on file with the Planning Department).

Mr. Cua: And that would conclude the Department's recommendation for the application.

Chair Mahoney: Okay. Commissioners?

Mr. Hull: Also, to add, as I previously stated, as the applicant pointed out that the report and the draft Findings of Fact and Conclusion of Law referenced complaints in the plural for the subject property, and the Department would make a verbal amendment to the Findings of Fact Point No. 5 to state, "Planning Department had previously received a complaint against the Subject Property for transient accommodations on the property.", as well as Point No. 17 in the Conclusion of Law to also, again, state, "The Department previously received a complaint on the subject property concerning transient accommodations on the site."

Chair Mahoney: Do we need any kind of motion or anything to put it in?

Ms. Higuchi Sayegusa: Not at this time. Just noting it for the record at this point because there needs to still be an action with respect to this permit application.

Chair Mahoney: Okay. So, Commissioners, are there any further questions for the applicant at this time? Okay, hearing none. The applicant, you can step back to the audience, please, for now. Thank you very much for your testimony and your presentation. Okay. Commissioners, do you have any thoughts? Or motions? Anybody want to say anything before we evolve into a motion? Commissioner Katayama.

Mr. Katayama: May I ask the Planner a question? Just to help sort of...a little more background.

Chair Mahoney: Yes, that would be good. Thank you.

Mr. Katayama: The Department's position on this permit application is the intensity of use in a residential area. Could you sort of help me with how the Department came to that conclusion?

Mr. Hull: I can actually delve into that, Commissioner.

Mr. Katayama: Oh, okay. Thank you.

Mr. Hull: The Planner had kind of summarized the report for the record, but I can direct the Commission back to some of the points that the Department made in the Director's Report. In particular, the study that was referenced in the applicant's presentation, which I believe she was referencing the same one, was the Kaua'i County Comprehensive Zoning Ordinance Update: Single-Family Transient Vacation Rentals Bed and Breakfasts. We also cited that study thoroughly in our report in which, among other things, it states, "Over the years, the Planning Department has received complaints about both homestays and transient vacation rentals in residential neighborhoods. Complaints have mostly concerned homestays with multiple units for rent and impacts on traffic, parking, and signs." It specifically lists neighborhood impacts, which states, "In general, the impact of short-term vacationers compared with year-round residents can be significant. Resident populations live and work in the community, and thus become somewhat integrated, while impacts associated with short-term vacationers are more nuisance related, often generate noise and light pollution. Late night music and merrymaking, floodlights, garbage taken out on the street on off days, illegal parking, and negligent property maintenance are garden-variety complaints often cited by annoyed neighbors." Concerning the length of stay, the study states, "Generally, the shorter the stay, the less inclined one might be to respect neighbor diplomacy. The stereotypical "weekend warrior", trying to pack the most fun into the least amount of time, will invariably generate more trips to the store or beach, keep later hours, and create a greater disruption with light and noise. Still, for some people, the concern is not so much the negative impacts as the lack of community involvement in typical transients." Concerning commercial versus residential uses, the study states, "Some neighbors complain that TVRs look like single-family homes but function more like commercial uses. Less disruptive are small-scale B&Bs, with full-time residents and operator onsite. However, B&Bs with over a dozen guest rooms are primarily businesses and would create a greater impact in residential settings." The Department will also note that the application in this particular case is not going to have more than a dozen guests. Concerning community character, the study states, "Property owners rely on rent streams and spending dollars generated by vacationers, but local residents want to preserve their neighborhood's residential character. Local residents have become

concerned about the large concentrations of vacation rentals in certain communities, particularly beach communities such as Hanalei and Hā'ena. In public meetings, residents have reported that many Hā'ena houses were used primarily as vacation rentals and that the character of the area had changed. The neighborhood is affected not only by the continual turnover of vacation renters, but also the lack of full-time residents." So the study does cite some beneficial uses of transient accommodations, but it also states the impacts, and particularly, the cumulative impacts that transient accommodations have, particularly, on the north shore.

The Department goes on to state that given with this application, "With additional transients frequenting the subject site, the proposed transient accommodation operation is anticipated to have additional parking and traffic impacts in the surrounding Hanalei area. With additional transients frequenting the subject site, the proposed transient accommodation operation is anticipated to contribute to the overall loss of Hanalei's neighborhood character. With additional transients frequenting the subject site, the proposed transient accommodation operation is anticipated to have additional noise impacts to the Hanalei neighborhood. With additional transients frequenting the subject site, housing opportunities for Hanalei residents are negatively impacted. The aforementioned anticipated impacts generated through the proposed transient accommodation operation will add to the existing cumulative impacts the Hanalei residential community endures as a result of a large concentration of alternative visitor units."

I think the Department is sympathetic to what the applicant is essentially saying and that they're being priced out of the market. And there is, I think, some position of some that believe that Hanalei is a lost cause at this point; that's it's been so negatively impacted that we just have to throw our hands up in the air and just call it a transient accommodation site. To do that, though, it does take an ordinance adoption at the Council-level. I mean, there may be some argument to say that this area should be converted into a transient destination area, and if that is the case, then it needs to go through the County Council. The Department and this body, we feel, has to review it under the residential standards that the area currently has. And there is an inundation of transient accommodations in the area that exist there. It's the Department's position that we still have to review it under residential standards and hold the line there. Like I said, we are sympathetic to the applicant's position that the overall cumulative impacts with TVRs on the area and their ability to maintain a house is an issue, but when it comes to land use, we have to review the overall cumulative impacts of noise, parking, nuisance-related issues that often come with transient accommodations. And so that's why we're holding the line and recommending denial of this particular application.

Mr. Katayama: Mr. Chair, can I ask the Department another follow-up?

Chair Mahoney: Yes.

Mr. Katayama: Kaaina, is there any level of reduction of cumulative impact that they would...the Department will find acceptable? Right now, the applicant is proposing a 25% reduction. You know, would a 50% or 75% reduction be more palatable?

Mr. Hull: In the Department's position, no. That there's ultimately, I think...if the Commission decides to look at that issue, but the Department's position is that Hanalei, in particular, has been

overly inundated with transient accommodations and we were reviewing it under the residential standards that we're currently required to do so under.

Chair Mahoney: Commissioner Keawe, do you have a question? No? Good. He answered it.

Mr. Keawe: I had a question. Jodi, we received some public testimony that was submitted to Commission members. Are those allowed to be read? There's a couple of good points that I'd like to quote someone else that submitted a letter to us, and I just want to know what the protocol is.

Ms. Higuchi Sayegusa: It's within the Chair's discretion on how to...whether to, you know, allow the reading of additional testimonies.

Mr. Keawe: See, I don't know if...yeah, I want to make sure I don't get in trouble with the person that submitted it. They're not here, but it was a letter that had specific items that I thought, you know, should come out.

Ms. Higuchi Sayegusa: It's up to you. It's also within the...it's already received for the record and part of the packet related to this agenda item.

Mr. Keawe: So it was received for the record.

Ms. Higuchi Sayegusa: Yes.

Chair Mahoney: Yes, we did.

Mr. Hull: Technically its public material at that point.

Mr. Keawe: Right. Okay.

Chair Mahoney: Okay, well, we did have other testimony. We let her, so you could read that. It is part of the record already, but...

Mr. Keawe: Can I read this? In part, yeah. So it says, despite all of the injury Hanalei has suffered due to the past proliferation of non-conforming transient accommodations, Hanalei is not a Visitor Destination Area. It remains a struggling residential community. The fact that so many residential properties have been converted to commercial/resort transient accommodations in the past is doubly important that no additional properties be converted to TVR/homestay/B&B use today or in the future. Hanalei did not lose its residential housing stock to commercial/resort overnight. It happened one-by-one. If Hanalei is to survive into the future as a viable community, its housing stock needs to be converted back to residential use one-by-one. Allowing the conversion of a residential property to a three (3) bedroom homestay/B&B would be contrary to what needs to be done.

Chair Mahoney: Alright. Thank you. Okay, well, Commissioners, we have some options in front of us; introduction of a motion or formulation considering what was presented by the applicant and the Department. Commissioner Streufert.

Ms. Nogami Streufert: I guess I'm having some problems with things that...and I don't have the minutes of the May '15 meeting. I don't think I got that, but a lot of these quotes that are in this exhibit, I'm not sure whether they were taken out of context or what their meaning was, specifically. For example, that you can come back in six (6) months to apply. What was the context of that?

Unidentified Speaker: (Inaudible)

Chair Mahoney: No, you may not.

Ms. Higuchi Sayegusa: I think this was after the Contested Case procedure the first time around that...this application came through and was considered by the Commission. It went through the Contested Case process, and at the conclusion of that, the application was denied by this body. So under our...correct me if I'm wrong...I think it's our rules, our Commission rules, applicants can reapply for any application after six (6) months has elapsed.

Ms. Nogami Streufert: So the question is one of reapplying, not that there was any intent that...there was no implication that they would only...it would just...the implication is that it would only get another hearing. Is that correct?

Ms. Higuchi Sayegusa: They basically...they resubmit the application. They can submit new materials attached to that application, and ultimately, it's now before you folks again.

Mr. Keawe: I think...to clarify my comments, I think that was the second meeting I attended as a brand new Commissioner, so I didn't know the scope or the depth of the issue, I think. I was just reacting to what was being discussed at the time, and you all know when you're new to this body, it can get pretty overwhelming if you don't know the total scope.

Chair Mahoney: Okay. Does that clear up your question satisfactorily?

Ms. Nogami Streufert: Thank you.

Chair Mahoney: Okay. So we can bring it back to maybe some decision-making or process for making a decision here. It's a complicated item, but we've heard from the applicant and we've heard from the Department, and we'll have to make some evaluation based on what we heard today for an action item. So we can start moving along in that vein. Is there anything...any concerns that any other Commissioner would like clarified? Maybe it would be helpful. No?

Mr. Katayama: Mr. Chair, I would like to make a motion, please.

Chair Mahoney: Okay. Commissioner Katayama.

Mr. Katayama: On the Special Management Area Use Permit SMA(U)-2016-5, Class IV Zoning Permit Z-IV-2016-16, Use Permit U-2016-13, I would like to make a motion to adopt the Department's position of denial of this application.

Chair Mahoney: Okay. Is there a second?

Mr. Ho: Second.

Chair Mahoney: It's been moved and seconded. Any further discussion? Hearing none. We'll call for a roll call, please.

Mr. Hull: Commissioner Keawe?

Mr. Keawe: Aye.

Mr. Hull: Commissioner Streufert?

Ms. Nogami Streufert: Aye.

Mr. Hull: Commissioner Katayama?

Mr. Katayama: Aye.

Mr. Hull: Commissioner Ho?

Mr. Ho: Aye.

Mr. Hull: Commissioners Abrams? Oh, excuse me. Sorry. (Laughter in background)
Commissioner Mahoney?

Chair Mahoney: Aye.

Mr. Hull: Motion passes 5:0, Chair.

Chair Mahoney: Okay.

Mr. Hull: The next agenda item is M.1.b.

Ms. Higuchi Sayegusa: I'm sorry. Just...I'm sorry. Before we move on, the Department has submitted a proposed Findings of Fact, Conclusions of Law with an amendment noted, so that just needs to be...I mean, I guess that's the...it follows the action, I guess, sort of as a housekeeping measure, but that will be finalized, I guess, by the Commission and then transmitted?

Mr. Hull: No, so the recommended Findings of Fact, Conclusions of Law was submitted as part of the recommendation, so it would be part of the motion.

Ms. Higuchi Sayegusa: Okay.

Mr. Katayama: As amended.

Mr. Hull: As verbally amended, correct.

Ms. Higuchi Sayegusa: Okay. Just to note. Thank you.

Chair Mahoney: Okay, then...?

Mr. Hull: We're good to move on, Jodi?

Ms. Higuchi Sayegusa: Yes.

Mr. Hull: Okay.

The next agenda item is M.1.b. Class IV Zoning Permit Z-IV-2016-17, Use Permit U-2016-14 and Special Permit SP-2016-6 to allow conversion of an existing residence into a bed and breakfast operation on a parcel located on the northern side of Koolau Road in Moloa'a, further identified as 6867 Koolau Road, Tax Map Key 4-9-011:038, and containing a total area of 43,560 feet. The agenda item says "acres", it should be "feet".

Mr. Keawe: It is feet, not acres. That's a lot of acres if it's...

Mr. Hull: The applicant is Steven and Eddi Henry. Unfortunately, the applicant has failed to meet the notification requirements set under Kaua'i County Code Section 8-3.1, and the hearing has to be rescheduled. As discussed previously in the morning, that's getting rescheduled to...or we would recommend that this be rescheduled to August 23, 2016.

Ms. Higuchi Sayegusa: There was already a motion and a second. We took action on that matter.

Chair Mahoney: We did.

Ms. Higuchi Sayegusa: For deferral.

Mr. Hull: Oh, we don't have to do it simultaneously for the Schedule F?

Ms. Higuchi Sayegusa: The whole matter was deferred.

Mr. Hull: Oh, okay. My apologies. So it was automatically deferred. (Laughter)

ANNOUNCEMENTS

Topics for Future Meetings

Mr. Hull: We are now on Agenda Item N, Announcements. The Commissioners are in receipt of the packet for topics for future meetings. Do you have any questions concerning those topics?

Chair Mahoney: Any objections?

Mr. Hull: Seeing none.

The following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, July 26, 2016.

Mr. Hull: The next announcement is the following scheduled Planning Commission meeting will be held at 9:00 a.m., or shortly thereafter at the Līhu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B, 4444 Rice Street, Līhu'e, Kaua'i, Hawai'i 96766 on Tuesday, July 26, 2016.

Chair, we no longer have any other agenda items.

Chair Mahoney: Okay. Do we need a motion to adjourn?

Mr. Keawe: Move to adjourn.


Ms. Nogami Streufert: Second.

Chair Mahoney: All in favor? (Unanimous voice vote) With no further business, meeting adjourned. Thank you.

ADJOURNMENT

Chair Mahoney adjourned the meeting at 10:46 a.m.

Respectfully submitted by:



Darcie Agaran,
Commission Support Clerk

() Approved as circulated (add date of meeting approval)

() Approved as amended. See minutes of _____ meeting.